

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

EARL SMART,	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 3:09-cv-938-MEF
	)	
TUSKEGEE UNIVERSITY, <i>et al.</i> ,	)	(WO—Do Not Publish)
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

This cause is before the Court on Plaintiff Earl Smart’s (“Smart”) Motion to Dismiss Violation of Fair Labor Standards Act Count of Complaint (Doc. # 17) and Motion to [Remand] Cause Back to Circuit Court of Macon County, Alabama (Doc. # 18), both filed on April 20, 2010.

First, Smart moves to dismiss his Fair Labor Standards Act (“FLSA”) claim for overtime pay (Count III). Because the defendants do not oppose Smart’s motion, the Court will dismiss Count III.

Second, because Count III was his only federal claim, Smart moves to remand the his case back to state court. The Court, in its discretion, will retain supplemental jurisdiction over Smart’s remaining state-law claims. *See* 28 U.S.C. § 1367(c)(3) (“The district courts *may* decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district has dismissed all

claims over which is had original jurisdiction . . . .” (emphasis added)).

Accordingly, it is hereby ORDERED as follows:

1. The plaintiff’s Motion to Dismiss Violation of Fair Labor Standards Act Count of Complaint (Doc. # 17) is GRANTED, and Count III of the Complaint is DISMISSED with prejudice.

2. The plaintiff’s Motion to [Remand] Cause Back to Circuit Court of Macon County, Alabama (Doc. # 18) is DENIED.

DONE this the 10th day of May, 2010.

/s/ Mark E. Fuller  
CHIEF UNITED STATES DISTRICT JUDGE